STATE OF MICHIGAN

COURT OF APPEALS

ANN ANKLAM, Plaintiff-Appellant,	UNPUBLISHED June 26, 2014
v	No. 317962 Kent Circuit Court
DELTA COLLEGE DISTRICT and DELTA COLLEGE BOARD OF TRUSTEES, Defendants-Appellees.	LC No. 12-009608-CZ

Before: MURPHY, C.J., and SHAPIRO and RIORDAN, JJ.

PER CURIAM.

Plaintiff filed a complaint against defendants, alleging various violations of the Freedom of Information Act (FOIA), MCL 15.231 *et seq.* She now appeals as of right the trial court's order granting defendants' motion for summary disposition and denying plaintiff's own motion for summary disposition. Except for one issue that we conclude is not justiciable, we reverse and remand for further proceedings.

On August 9, 2012, and August 10, 2012, plaintiff sent defendants two FOIA requests, each of which requested multiple records. On August 31, 2012, defendants granted in part and denied in part plaintiff's FOIA requests. In general, the two sets of FOIA requests sought information regarding the compensation and benefits of Jean Goodnow, who holds the position of Delta College President. After defendants' decision to grant in part and deny in part plaintiff's FOIA requests, plaintiff filed the instant action claiming that defendants committed multiple violations of the FOIA. The parties subsequently filed competing motions for summary disposition under MCR 2.116(C)(10). The trial court granted defendants' motion and denied plaintiff's motion.

A trial court's ruling on a motion for summary disposition is reviewed de novo on appeal. *Elba Twp v Gratiot Co Drain Comm'r*, 493 Mich 265, 277; 831 NW2d 204 (2013).[1]

[1] In *Pioneer State Mut Ins Co v Dells*, 301 Mich App 368, 377; 836 NW2d 257 (2013), this Court recited the well-established principles governing a motion for summary disposition brought pursuant to MCR 2.116(C)(10):

Interpretation of the FOIA is a question of law that is also subject to de novo review. *Thomas v City of New Baltimore*, 254 Mich App 196, 200; 657 NW2d 530 (2002). With respect to the principles applicable to statutory construction, our Supreme Court in *Whitman v City of Burton*, 493 Mich 303, 311-312; 831 NW2d 223 (2013), observed:

> When interpreting a statute, we follow the established rules of statutory construction, the foremost of which is to discern and give effect to the intent of the Legislature. To do so, we begin by examining the most reliable evidence of that intent, the language of the statute itself. If the language of a statute is clear and unambiguous, the statute must be enforced as written and no further judicial construction is permitted. Effect should be given to every phrase, clause, and word in the statute and, whenever possible, no word should be treated as surplusage or rendered nugatory. Only when an ambiguity exists in the language of the statute is it proper for a court to go beyond the statutory text to ascertain legislative intent. [Citations omitted.]

In MCL 15.231(2), the Legislature expressly declared the public policy and purpose behind enactment of the FOIA:

> It is the public policy of this state that all persons, except those persons incarcerated in state or local correctional facilities, are entitled to full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and public employees, consistent with this act. The people shall be informed so that they may fully participate in the democratic process.

"[T]he FOIA is a prodisclosure statute; a public body must disclose all public records not specifically exempt under the act." *Thomas*, 254 Mich App at 201, citing MCL 15.233(1); see

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> In general, MCR 2.116(C)(10) provides for summary disposition when there is no genuine issue regarding any material fact and the moving party is entitled to judgment or partial judgment as a matter of law. A motion brought under MCR 2.116(C)(10) tests the factual support for a party's claim. A trial court may grant a motion for summary disposition under MCR 2.116(C)(10) if the pleadings, affidavits, and other documentary evidence, when viewed in a light most favorable to the nonmovant, show that there is no genuine issue with respect to any material fact. A genuine issue of material fact exists when the record, giving the benefit of reasonable doubt to the opposing party, leaves open an issue upon which reasonable minds might differ. The trial court is not permitted to assess credibility, weigh the evidence, or resolve factual disputes, and if material evidence conflicts, it is not appropriate to grant a motion for summary disposition under MCR 2.116(C)(10). A court may only consider substantively admissible evidence actually proffered relative to a motion for summary disposition under MCR 2.116(C)(10). [Citations and internal quotation marks omitted.]

also *Nicita v Detroit*, 194 Mich App 657, 661-662; 487 NW2d 814 (1992). "[I]f a public body makes a final determination to deny a request, the requesting person may either appeal the denial to the head of the public body or commence an action in the circuit court within 180 days." *Scharret v City of Berkley*, 249 Mich App 405, 412-413; 642 NW2d 685 (2002), citing MCL 15.235(7).

Plaintiff first argues that the trial court erred when it determined that defendants had not violated MCL 15.235(4)(c). We agree. MCL 15.235(4)(c) provides that a public body's "written notice denying a request for a public record in whole or in part . . . shall contain . . . [a] description of a public record or information on a public record that is separated or deleted pursuant to [MCL 15.244[2]], if a separation or deletion is made." Here, on August 31, 2012, defendants partially denied the FOIA request in ¶ 10 of plaintiff's first set of requests on the basis that the withheld information fell under the attorney-client privilege exemption of MCL 15.243(1)(g).[3] The FOIA does exempt from disclosure "[i]nformation or records subject to the

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[2] MCL 15.244 provides:

> (1) If a public record contains material which is not exempt under section 13, as well as material which is exempt from disclosure under section 13, the public body shall separate the exempt and nonexempt material and make the nonexempt material available for examination and copying.
>
> (2) When designing a public record, a public body shall, to the extent practicable, facilitate a separation of exempt from nonexempt information. If the separation is readily apparent to a person requesting to inspect or receive copies of the form, the public body shall generally describe the material exempted unless that description would reveal the contents of the exempt information and thus defeat the purpose of the exemption.

[3] Plaintiff had requested:

> Copies of any and all communications (in any form, including e-mail communications) that were exchanged between any member of the President's Compensation Committee, the Delta College Board of Trustees and any Delta College staff, including Board Secretary and the President for a period from May 1, 2008[,] to November 11, 2008[,] regarding the President's Employment Contract and/or her compensation.

Defendants' FOIA coordinator responded:

> This request is GRANTED IN PART and DENIED IN PART. The information is exempt from disclosure under Section 13(1)(g) of the [FOIA], for information or records subject to the attorney-client privilege.

attorney-client privilege." MCL 15.243(1)(g). However, defendants' written notice of partial denial did not describe or otherwise identify the information that was separated or deleted based on the attorney-client privilege. Defendants did not provide such a description until they attached an affidavit executed by their FOIA coordinator to their June 2013 motion for summary disposition, which, of course, was after plaintiff commenced the litigation seeking FOIA compliance. The trial court found that the FOIA coordinator's affidavit cured any deficiency in defendants' written notice, and it granted summary disposition in favor of defendants regarding plaintiff's claim of a violation of MCL 15.235(4)(c). The plain language of MCL 15.235(4)(c), however, requires that a public body's written notice denying a FOIA request "shall contain" a description of the public record that was separated or deleted. The word "shall" denotes a mandatory directive, not a discretionary act. *Smitter v Thornapple Twp*, 494 Mich 121, 136; 833 NW2d 875 (2013). There is no language in MCL 15.235(4)(c) remotely suggesting that compliance may be achieved at a later date or that compliance is excusable if the public body eventually provides the required description. Compliance certainly cannot be found when the public body communicates the description of the separated or deleted records after the requesting party is forced to initiate litigation to obtain FOIA compliance. On the record before us, there is no genuine issue of material fact regarding defendants' failure to comply with MCL 15.235(4)(c). Thus, with respect to plaintiff's claim under MCL 15.235(4)(c), the trial court erred in granting defendants' motion for summary disposition and in denying plaintiff's own summary disposition motion relative to the claim. We reverse the trial court's grant of summary disposition in favor of defendants and remand for entry of judgment in favor of plaintiff, declaring that defendants violated MCL 15.235(4)(c). See *Scharret*, 249 Mich App at 416.

On a related issue, plaintiff next argues that defendants improperly withheld requested information under the attorney-client privilege exemption of MCL 15.243(1)(g). Section 13 of the FOIA sets forth several exemptions to a public body's duty to disclose under the FOIA. *Manning v City of East Tawas*, 234 Mich App 244, 248; 593 NW2d 649 (1999). "[T]hese exemptions must be construed narrowly, and the burden of proof rests with the party asserting an exemption." *Id*. (citation omitted). In order for a public body to meet its burden of proof in asserting an exemption, "'the public body should provide a complete particularized justification for the claimed exemption[].'" *Nicita*, 194 Mich App at 662 (citation omitted); see also *The Evening News Ass'n v City of Troy*, 417 Mich 481, 503, 516; 339 NW2d 421 (1983). The public body should provide "'[d]etailed affidavits describing the matters withheld'" and show that it complied with the requirement to separate exempt and non-exempt material under MCL 15.244. *Evening News Ass'n*, 417 Mich at 503 (citation omitted); *Nicita*, 194 Mich App at 662-663. The public body's "[j]ustification of exemption must be more than 'conclusory,' i.e., simple repetition of statutory language." *Evening News Ass'n*, 417 Mich at 503. Moreover, "'a trial court may not make conclusory or 'generic determinations' when deciding whether the claimed exemptions are justified.'" *Nicita*, 194 Mich App at 662 (quotation omitted). Rather, "before determining that the defendant sustained its claim of exemption, the court must specifically find that the particular sections of the public record requested by the plaintiff would for particular reasons fall within the claimed exemptions." *Id*.

Here, defendants partially denied plaintiff's record requests in ¶ 10 of her first set of requests, as alluded to earlier, and ¶ 2 of her second set of requests, asserting that the withheld information was exempt under the attorney-client privilege exemption in MCL 15.243(1)(g).[4] In *Herald Co, Inc v Ann Arbor Pub Sch*, 224 Mich App 266, 279; 568 NW2d 411 (1997), this Court examined the exemption, explaining:

> The attorney-client privilege attaches to communications made by a client to an attorney acting as a legal adviser and made for the purpose of obtaining legal advice. The purpose of the privilege is to enable a client to confide in an attorney, secure in the knowledge that the communication will not be disclosed. The scope of the privilege is narrow: it attaches only to confidential communications by the client to its advisor that are made for the purpose of obtaining legal advice. [Citations omitted.]

The FOIA coordinator's affidavit averred that, pursuant to the attorney-client privilege exemption, defendants withheld six e-mails from the records they produced in response to ¶ 10 of plaintiff's first set of FOIA requests and that they redacted certain information on billing records produced in response to ¶ 2 of the second set of FOIA requests. According to the affidavit, the e-mails were communications between defendants' general counsel and members of the Compensation Committee "and/or" President Goodnow. However, the FOIA coordinator did not describe the substance of the withheld e-mails or redacted information in the billing statements as being exempted on the basis that the withheld information reflected confidential communications made to counsel for the purpose of obtaining legal advice. The affidavit cursorily indicated that the coordinator relied on counsel to redact information and to withhold communications under the attorney-client privilege exemption. Defendants' motion for summary disposition relied on the coordinator's affidavit to justify their claimed exemptions under MCL 15.243(1)(g).

"When a public body's statements alone are inadequate to determine, upon review de novo, if disclosure should be compelled, a trial court should examine the disputed documents in camera to resolve the question." *Manning*, 234 Mich App at 248. Here, at the hearing on the

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[4] Plaintiff had requested the following records in ¶ 2 of the second set of requests:

> Copies of itemized billing statements, including a description of all services performed and all costs charged, which were submitted to Delta College by any attorneys who performed services for the Delta Board of Trustees President's Compensation Committee for the years 2008 and 2009.

Defendants' FOIA coordinator responded:

> This request is GRANTED IN PART and DENIED IN PART. The information redacted is exempt from disclosure under Section 13(1)(g) of the [FOIA], for information or records subject to the attorney-client privilege.

parties' competing motions for summary disposition, plaintiff asked the trial court to conduct an in-camera review of the materials withheld under MCL 15.243(1)(g). However, the record does not indicate that the trial court undertook any in-camera review of the six withheld e-mails, but rather merely relied on the FOIA coordinator's affidavit and the assertions defendants made in their motion for summary disposition. But defendants' assertions ultimately relied on the coordinator's affidavit for support, which in turn did not aver that the withheld e-mails were confidential communications made to counsel for the purpose of obtaining legal advice. Given that the trial must construe a claimed exemption narrowly and defendants were required to provide "detailed" affidavits describing the matters withheld, *Evening News Ass'n*, 417 Mich at 503, we are compelled to conclude that the trial court erred in finding that defendants met their burden of proof regarding whether the withheld e-mails were exempt under the attorney-client privilege exemption.

Furthermore, with respect to ¶ 2 of the second set of requests in which plaintiff sought detailed copies of attorney billing statements, defendants provided redacted billing statements, but did not provide any justification for the redactions other than to state that the information was covered by the attorney-client privilege exemption. The public body's "[j]ustification of exemption must be more than 'conclusory,' i.e., simple repetition of statutory language." *Evening News Ass'n*, 417 Mich at 503. Here, the trial court relied on its review of the redacted documents to make its ruling. The trial court found that "[m]ost of the redacted information related to" the substance of the communications and that there were "very few instances where the redacted information is who the attorney had a conversation with." The trial court concluded that because "in some instances it is possible that who an attorney had a conversation with" could be covered by the attorney-client privilege, defendants properly exempted the redacted information under MCL 15.243(1)(g). Again, a trial court must construe a claimed exemption narrowly and is not permitted to render conclusory or generic determinations in deciding whether a claimed exemption is justified. *Nicita*, 194 Mich App at 662. Rather, the trial court "'must specifically find that the particular sections of the public record requested by the plaintiff would for particular reasons fall within the claimed exemptions.'" *Id*. (citation omitted). The attorney-client privilege exemption is only triggered in regard to confidential communications made by a client to an attorney that are made for the purpose of obtaining legal advice. *Herald Co*, 224 Mich App at 279. In the case at bar, the trial court did not speak in terms of the required finding for purposes of the attorney-client privilege exemption.

Ultimately, the record before us is insufficient to determine whether the information defendants withheld and redacted under the attorney-client privilege exemption was properly exempted under MCL 15.243(1)(g). We reverse the trial court's grant of summary disposition with respect to plaintiff's claims relative to MCL 15.243(1)(g) and remand for further factual findings as to this issue, which may require an in-camera review of the withheld e-mails and/or unredacted billing statements.

Plaintiff next argues that defendants improperly withheld requested information under the privacy exemption of MCL 15.243(1)(a). We agree. MCL 15.243(1)(a) provides that "[a] public body may exempt from disclosure as a public record under this act any . . . [i]nformation of a personal nature if public disclosure of the information would constitute a clearly unwarranted invasion of an individual's privacy." In *State News v Michigan State Univ*, 274 Mich App 558,

576-577; 735 NW2d 649 (2007), rev'd in part on other grounds 481 Mich 692 (2008), this Court examined the privacy exemption, stating:

> [T]he privacy exemption consists of two distinct elements, both of which must be satisfied for the exemption to apply. First, the information must be of a "personal nature," and, second, the disclosure of such information must constitute a "clearly unwarranted" invasion of privacy. Information that is not of a personal nature is subject to disclosure without considering the second prong of the exemption. [Citations omitted.]

Under the first prong, information is of a personal nature when it is intimate, embarrassing, private, or confidential information. *Mich Federation of Teachers & Sch Related Personnel, AFT, AFL-CIO v Univ of Mich*, 481 Mich 657, 676; 753 NW2d 28 (2008). Regarding the second prong, this Court in *Detroit Free Press, Inc v City of Southfield*, 269 Mich App 275, 282; 713 NW2d 28 (2006), observed:

> Determining whether the disclosure of such information would constitute a clearly unwarranted invasion of privacy requires a court to balance the public interest in disclosure against the interest the Legislature intended the exemption to protect. The only relevant public interest is the extent to which disclosure would serve the core purpose of the FOIA, which is to facilitate citizens' ability to be informed about the decisions and priorities of their government. This interest is best served through information about the workings of government or information concerning whether a public body is performing its core function. [Citations omitted.]

In ¶ 2 of plaintiff's first set of requests, she asked for a "[c]opy of the 403(b) salary reduction agreement signed by President Goodnow which allowed her participation in a 403(b) plan." In response, the FOIA coordinator indicated:

> This request is GRANTED IN PART and DENIED IN PART. The redacted information is exempt from disclosure under Section 13(1)(a). President Goodnow's personal financial decisions are information of a personal nature the public disclosure of which would constitute a clearly unwarranted invasion of Dr. Goodnow's privacy.

Defendants produced President Goodnow's salary reduction agreements, but they redacted information revealing the amount of her salary that President Goodnow elected to contribute to her 403(b) retirement account ("Bi-Weekly Reduction $ [redacted] or % [redacted]").

Plaintiff argues that the 403(b) information was subject to disclosure under MCL 15.243a and that, additionally, in regard to the claimed privacy exemption, the information was necessary to determine whether the total annual contributions to President Goodnow's 403(b) account exceeded IRS limitations. MCL 15.243a provides, in relevant part, that a community college "shall upon request make available to the public the salary records of an employee or other official of the institution of higher education, school district, intermediate school district, or

community college." MCL 15.243a is prefaced by the language, "Notwithstanding section 13," which is the exemption section that encompasses the privacy exemption, MCL 15.243(1)(a). Accordingly, if a record comes within the parameters of MCL 15.243a, it must be disclosed regardless of whether it otherwise reveals information of a personal nature that, if disclosed, would constitute a clearly unwarranted invasion of privacy.

Defendants fail to even address or acknowledge MCL 15.243a in their appellate brief, let alone present an argument with respect to why it would not be applicable. The full title of the salary reduction agreements is the "DELTA COLLEGE 403(b) RETIREMENT PLAN SALARY REDUCTION AGREEMENT FOR ELECTIVE DEFERRAL." The *salary* reduction agreements, in general, would appear to qualify as "salary records" for purposes of MCL 15.243a. A somewhat more difficult question is whether a redaction within a salary record is nonetheless permissible under MCL 15.243a with respect to information concerning the nature or extent of an employee's 403(b) contributions, which information does not truly reflect or identify the employee's "salary"[5] but rather a type of salary spending decision by the employee. We note that MCL 15.243a's requirement to make available an employee's salary records does not necessarily mean that every piece of information contained within a salary record must be disclosed. For example, a person's full social security number cannot be disclosed pursuant to a FOIA request, MCL 445.85, and President Goodnow's social security number was redacted in the salary reduction agreements without dispute. We decline to resolve the issue posed above, given that, as we shall explain below, the information regarding President Goodnow's contributions is not subject to the privacy exemption under the particular circumstances of this case.

Although the extent of President Goodnow's contributions to her 403(b) retirement account constitutes information of a personal nature, we cannot conclude that disclosure of the information would be a clearly unwarranted invasion of her privacy, which is the second prong of the privacy-exemption test. *State News*, 274 Mich App at 576-577. In balancing the public interest in disclosure against the interest the Legislature intended the exemption to protect, *Detroit Free Press*, 269 Mich App at 282, we find in favor of disclosure. The salary reduction agreements provided, "The Employee must ensure that he/she is not exceeding the lower of the annual elective deferral limit or the annual addition limit established by the IRS[.]" They further provided, "In the event that contributions are made on behalf of the Employee which exceed the limits permitted by Sections 403(b), 402(g), 414(v) and/or 415 of the Internal Revenue Code, the Employee must assure that such excess deferrals, contributions and income on these amounts are returned to the Employee as required by the Internal Revenue Code." Finally, the salary reduction agreements provided:

> I fully understand my responsibilities as a participant in the Delta College 403(b) Retirement Plan and agree to provide both the Delta College 403(b) Plan Administrator and my 403(b) Account Service Provider(s) with accurate, timely

[5] The term "salary" is defined as "a fixed compensation paid periodically to a person for regular work or services." *Random House Webster's College Dictionary* (2001).

> information. I accept full responsibility for determining that the annual elective deferral amount(s) elected in my Salary Reduction Agreement(s) under the Delta College 403(b) Retirement Plan do not exceed the legal limits. Furthermore, I agree to indemnify and hold Delta College, its Board of Trustees, agents, employees and representatives and the Delta College 403(b) Plan Administrator harmless in any case, matter or proceeding involving or relating to alleged adverse tax consequences affecting any tax sheltered annuity or custodial account sold to me, including, but not limited to, any case, matter or proceeding in which it is alleged that there was a failure to calculate or improper calculation of the permissible limitations under current Code §§ 403(b), 402(g), 414(v) or 415 or under corresponding provisions of future tax laws.

We hold that disclosure of the 403(b) information at issue would facilitate the ability of citizens to be informed regarding President Goodnow's compliance with her contractual obligations, regarding any Internal Revenue Code (IRC) violations and President Goodnow's need to take remedial steps, and regarding any IRC violations and defendants' potential liability and need to seek indemnification under the salary reduction agreements. See *Detroit Free Press*, 269 Mich App at 282 (there is a public interest in facilitating a citizen's ability to be informed about the decisions and priorities of the government, which interest is best served through the disclosure of information concerning the workings of government or whether a public body is performing its functions). When balanced against President Goodnow's privacy interests relative to the extent of her 403(b) contributions, public disclosure governs; therefore, any invasion of privacy is not clearly unwarranted.

Defendants argue that "there is no merit to [plaintiff's] assertion that President Goodnow's personal financial information falls within the public interest due to an alleged potential for 'excess' annual contributions to her 403(b) retirement plan that could subject [defendants] to IRS fines and refunds." In support, defendants simply contend that they have specific accounting controls in their payroll management software that would prevent excess retirement contributions to the 403(b) plan. This argument, in our view, is irrelevant and is akin to claiming that the public interest in obtaining information on a matter of concern can be negated by promises or assurances of the public body that there is no need for the information or no need to be concerned about a matter, as the public body is up to the task of preventing an error; the public body cannot be left to dictate and define what is or what should be in the public's interest. The FOIA does not support defendants' self-accountability argument; rather, the FOIA seeks to achieve public-body accountability by permitting open access to public-body records by the citizens of the state, so as to keep the citizenry informed and on guard. In sum, the redacted information at issue is to be disclosed, and the trial court erred in ruling to the contrary.

Plaintiff next argues that defendants violated MCL 15.235(4)(d)(*i*) by failing to advise her that she had the right to file an appeal with the board of trustees, which, according to plaintiff, is the head of the public body in this case. We agree. MCL 15.235(4)(d)(*i*) provides in relevant part that "[a] written notice denying a request for a public record in whole or in part . . . shall contain . . . [a] full explanation of the requesting person's right to . . . [s]ubmit to the head of the public body a written appeal . . . ." Here, defendants' written notice of partial denial informed plaintiff that she could appeal to President Goodnow. Plaintiff contends that President

Goodnow was not the head of Delta College and, thus, defendants violated MCL 15.235(4)(d)(*i*) when they incorrectly instructed her to direct her appeal to President Goodnow.

Under the Community College Act of 1966 ("the CCA"), MCL 389.1 *et seq.*, it is abundantly clear that the head of the Delta College District is the Delta College District Board of Trustees. See, e.g., MCL 389.14(1) ("A community college district is directed and governed by a board of trustees[.]"). Accordingly, for purposes of MCL 15.235(4)(d)(*i*), the written notice of denial had to include language explaining that plaintiff had a right to submit a written appeal to the Delta College District Board of Trustees. Assuming for the moment that the board of trustees had the authority to delegate its duty or authority to hear FOIA appeals to President Goodnow under MCL 389.123(d) and/or MCL 389.124(a) and (b), there is nothing in the record, including her employment agreement, that indicates that she was specifically delegated the duty or authority to hear FOIA appeals. Moreover, assuming such a delegation and the ability to do so under MCL 389.123(d) and/or MCL 389.124(a) and (b), it would not change the fact that, for purposes of MCL 15.235(4)(d)(*i*) and the notice of a right to appeal, the board of trustees is the head of the public body and needed to be identified as such; any delegation would merely be in a representative capacity for and on behalf of the board of trustees. While we question whether the FOIA would permit the head of a public body to delegate the duty or authority to hear a FOIA appeal, we ultimately need not answer that question, given that we have only been asked to rule on whether President Goodnow should have been identified as head of the public body in connection with the required notice under MCL 15.235(4)(d)(*i*) and that plaintiff only pursued an appeal in the circuit court.

Next, plaintiff argues that defendants violated MCL 15.234(3) by failing to establish and publish procedures and guidelines to allow them to charge FOIA fees. MCL 15.234(1) provides that "[a] public body may charge a fee for a public record search, the necessary copying of a public record for inspection, or for providing a copy of a public record." MCL 15.234(3) provides, in relevant part, that "[a] public body shall establish and publish procedures and guidelines to implement this subsection." Here, although defendants waived plaintiff's FOIA fees, plaintiff still sought declaratory and injunctive relief precluding defendants from charging FOIA fees under MCL 15.234, where defendants allegedly failed to properly establish and publish procedures and guidelines regarding FOIA fees as required by MCL 15.234(3). It is uncontroverted that at all times relevant to this case, defendants had procedures and guidelines regarding FOIA fees posted on the official website of Delta College.

Whether under the doctrine of ripeness, mootness, or standing, or a combination of two or more of those doctrines, we decline to address the issue presented. Plaintiff acknowledges that her associated claim for money damages was rendered moot because the fees were waived, but she asserts that her "request for declaratory and injunctive relief is not moot because Delta College is still imposing fees for FOIA requests . . . ." Plaintiff does not claim, nor provide evidence, that defendants are imposing fees on her. Whether defendants properly established and published procedures and guidelines to allow for the imposition of fees is only relevant if fees have actually been imposed on a party. There is no actual controversy over the payment of fees that requires judicial resolution and thus the issue is moot. See *State News v Mich State Univ*, 481 Mich 692, 704 n 25; 753 NW2d 20 (2008) (FOIA appeal would be rendered moot if a requested record were released as there would no longer be a controversy requiring judicial resolution); *Mich Chiropractic Council v Comm'r of the Office of Fin & Ins Servs*, 475 Mich

363, 371 n 15; 716 NW2d 561 (2006) (an issue is moot if it is no longer "live" or the parties lack a legally cognizable interest in the issue's outcome), overruled in part on other grounds *Lansing Sch Ed Ass'n v Lansing Bd of Ed*, 487 Mich 349; 792 NW2d 686 (2010); see also MCR 2.605(A)(1) (declaratory judgment may be rendered "[i]n a case of actual controversy"). An issue regarding any fees that might be imposed on plaintiff in the future is not ripe for consideration. *Mich Chiropractic Council*, 475 Mich at 371 n 14 (ripeness precludes adjudication of hypothetical or contingent claims prior to an actual injury; a claim is not ripe if it rests on contingent future events that may never occur). And, as to this particular issue, plaintiff does not have "a special injury or right, or substantial interest, that will be detrimentally affected in a manner different from the citizenry at large." *Lansing Sch Ed*, 487 Mich at 372 (discussing the requirements to establish "standing").[6]

Finally, plaintiff asks us to enter an award of reasonable attorney fees and costs under MCL 15.240(6), which provides:

> If a person asserting the right to inspect, copy, or receive a copy of all or a portion of a public record prevails in an action commenced under this section, the court shall award reasonable attorneys' fees, costs, and disbursements. If the person or public body prevails in part, the court may, in its discretion, award all or an appropriate portion of reasonable attorneys' fees, costs, and disbursements. . . .

Considering that further proceedings and findings are necessary as discussed above, we leave it to the trial court, after resolution of all matters, to rule on any request for attorney fees and costs made by plaintiff, with the court to employ MCL 15.240(6) and to take into consideration conclusive rulings in this opinion.

We reverse and remand for further proceedings, except as to the public-body fee issue under MCL 15.234, which we conclude is not justiciable. Plaintiff, having predominantly prevailed on appeal, is awarded taxable costs pursuant to MCR 7.219. We do not retain jurisdiction.

/s/ William B. Murphy
/s/ Douglas B. Shapiro
/s/ Michael J. Riordan

[6] If steps have not already been taken, it might be wise for defendants to publish procedures and guidelines regarding FOIA fees in a setting other than solely the Internet.